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In the Supreme Court of the United States

No. 75-380

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,

Petitioner,

vs.

JONATHAN W. DIXON,

Respondent,

OPPOSITION BRIEF

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

NATURE OF THE CASE

This is a case in which Jonathan W. Dixon (hereinafter referred to as "Dixon") filed a Federal Employer's Liability action[1] against his employer Seaboard Coast Line Railroad Company (hereinafter referred to as "Seaboard") in a Florida state court.

[1]The action was brought pursuant to 45 U.S.C. §51 et seq.

Dixon resided in Georgia and sustained an injury in Georgia in the course and scope of his employment. The action was brought in Jacksonville, Florida, less than 100 miles away and the situs of Seaboard's principal place of business in Jacksonville.[2] Seaboard moved to dismiss the case in the Circuit Court on the theory of forum non conveniens, alleging that another forum would be a more convenient place to bring the suit. The lower court denied the motion (see Dixon's Exhibit "A" attached hereto). The lower court, in denying the motion, applied Florida law which does not allow the application of forum non conveniens when one of the parties is a Florida resident; and the Florida courts have defined a corporation having a principal place of business in Florida to be a "resident." See *Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797* (Fla.App.1969); *Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275* (Fla.App.1970), cert. den. 237 So.2d 540; *Seaboard Coast Line Railroad Co. v. Ford, Seaboard Coast Line Railroad Co. v. Britt* (consolidated cases) 238 So.2d 473 (Fla.App.1970), and *Seaboard Coast Line Railroad Co. v. West*, 242 So.2d 156 (Fla.App.1971).

Seaboard then took an interlocutory appeal to the First District Court of Appeal of Florida stating in its assignments of error that the lower court abused its discretion in failing to apply the doctrine of forum non con-

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[2]Seaboard has admitted that the Jacksonville headquarters of Seaboard is a principal office (see Seaboard's Appendix 15), and Seaboard, in its brief in the court below, further admitted "that the defendant has an operating office building in Jacksonville, Florida, which certainly can be described as a principal office." Additionally, Jacksonville has been judicially noticed and adjudicated by the Florida courts as the principal place of business of Seaboard. E.g. *Adams v. Seaboard Coast Line Railroad*, 224 So.2d 797 (Fla.App.1969).

veniens.[3] The right to appeal to the intermediate appellate courts of Florida is not absolute by virtue of Florida Appellate Rule 3.9(b), which provides for the dismissal of an appeal where it appears on its face to be frivolous or taken for the purpose of delay. Dixon moved to dismiss the appeal pursuant to that rule (See Dixon's Exhibit "C-1" attached) and the First District Court of Appeal, on November 12, 1974, granted Dixon's motion (see Dixon's Exhibit "C-2" attached hereto.) Thus, the ground for dismissing the appeal was that it was frivolous and taken for delay.

Seaboard then petitioned, on December 12, 1974, for writ of certiorari to the Supreme Court of Florida (see Dixon's Exhibit "D" attached hereto). Seaboard's petition was denied six months later on June 18, 1975, for lack of jurisdiction (see Dixon's Exhibit "E" attached hereto).[4]

Seaboard now seeks a petition for writ of certiorari in the Supreme Court of the United States, filing it within ninety days from the date the Supreme Court of Florida denied its petition for writ of certiorari. Seaboard, however, directs the writ to the First District Court of Appeal.

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[3]See Dixon's Exhibits "B-1" and "B-2" attached hereto.

[4]Florida Appellate Rule 4.5(c)(6) allows a petition for writ of certiorari to be taken from the District Court of Appeal to the Supreme Court of Florida within thirty days. If an automatic stay is desired, the petition must be taken within fifteen days from the District Court's decision. Here, the petition was sought by Seaboard after the fifteen day period and, thus, no stay was granted. (See Dixon's Exhibit "F" attached hereto.)

REASONS FOR NOT GRANTING THE WRIT

We respectfully suggest this Court should deny the Petition for the following grounds:

A. *The petition for writ of certiorari should be directed to the state trial court rather than the District Court of Appeal.*

Because the Supreme Court of Florida refused to take jurisdiction of the case below, counsel agrees with Seaboard that the writ of certiorari should not run to the Supreme Court of Florida.

Normally, the writ of error from the United States Supreme Court is to review judgments rendered "by the highest court of a State in which a decision could be had," 28 U.S.C. §1257. However, the writ should be directed to the judgment of an inferior state court where the higher courts have declined an appeal. See *Clark v. Pennsylvania*, 128 U.S. 395, (1888), *Gregory v. McVeigh*, 23 Wall. 294 (1875), and *Chicago & E.I.R. Co. v. Industrial Commission*, 284 U.S. 296 (1932). See also *Missouri K. & T.R. Co. v. Elliott*, 184 U.S. 530 (1902), and *Western Union Tel. Co. v. Hughes*, 203 U.S. 505 (1906).

It is clear that when an appellate court could—but refuses—to take jurisdiction of a case, the inferior court becomes the highest state court from which to petition to the United States Supreme Court.

Here, the Supreme Court of Florida refused to take jurisdiction of the case although it had the discretionary power to do so, but also was this true of the intermediate

appellate court, to-wit: the District Court of Appeal. Seaboard filed an interlocutory notice of appeal in the First District Court of Appeal, *but* the First District Court of Appeal dismissed the case and refused to hear it because the appeal was frivolous and filed for delay. Thus, the highest state court in which a decision could be had in the instant case was the trial court.

In *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1968), the petitioner (Nash) had a hearing before the State Unemployment Compensation Board. (This, for all intents and purposes, would be considered the "trial court.") Nash, then, sought certiorari review of that decision in the Florida District Court of Appeal which, per curiam, refused to hear the case. (Nash did not even then apply for relief from the Florida Supreme Court apparently because that Court, at that time, would not take jurisdiction of cases from a per curiam decision of a District Court of Appeal denying a petition for certiorari (See 389 U.S. at p. 237). Accordingly, the petition for writ of certiorari in the United States Supreme Court was directed to the "trial court," i.e., the Compensation Board, because the two appellate courts, i.e., the District Court of Appeal and Supreme Court, could have, but refused to take jurisdiction of the case.

It is abundantly clear from the record that both appellate courts in the case at bar have refused to take jurisdiction of the case and the writ should be directed to the trial court. Failure to direct a writ to the proper court requires the Supreme Court of the United States to dismiss the writ. See *Randall v. Tippecanoe County*, 261 U.S. 252 (1923).

B. *The decision of the state court did not involve a federal question.*

Because Seaboard seeks a writ of certiorari to the District Court of Appeal, First District, we must look to that opinion to determine whether the First District Court of Appeal's decision was based on a federal question. This Court has no jurisdiction to review a state court decision unless it appears affirmatively from the record not only that a federal question was presented for decision to the highest court of the state, but that the federal question was necessary to the determination of the case. See *Southwestern Bell Telephone Co. v. State of Oklahoma*, 303 U.S. 206 (1938).

The decision should have involved a federal question which was applied by the court in arriving at its decision. See *Ocean Insurance Co. v. Polleys*, 38 U.S. 157, (1839).

Although a federal question may be raised in state court, this Court will not entertain jurisdiction of the writ to the state court if the state court's decision was clearly decided on grounds not involving a federal question. E.g., *Connecticut ex rel. New York & N. E. R. Co. v. Woodruff*, 153 U.S. 689 (1894).

In looking at the decision of the court to which this writ is directed, i.e., the First District Court of Appeal, we see that the court dismissed the case because the appeal was frivolous and taken for delay. Thus, the decision (if that is what it is to be called) did not in any way involve a federal question. This Court has refused to take jurisdiction of state court decisions, such as the

one herein, which were dismissed for reasons not involving a federal question. See *Anderson v. Hultberg*, 238 U.S. 605 (1915).

There is no way one can construe a decision of the District Court of Appeal dismissing a claim, without opinion, for frivolity as resting upon a federal claim.

Even assuming that the per curiam decision of the First District Court of Appeal is tantamount to an affirmance of the trial court's ruling that the doctrine of forum non conveniens was not applicable in the case below, however, that decision is nevertheless solely a "question of state law, and not subject to review by the United States Supreme Court." *Smith v. Adsit*, 83 U.S. 185, (1872).

The essence of the question in the court below was whether or not the State of Florida would—as a matter of state policy—apply the doctrine of forum non conveniens only to non-residents, and not to residents. This determination is a proper function of the states and, in the absence of discriminatory application, is a local function not subject to federal review. *Missouri ex rel. Southern Railroad Co. v. Mayfield*, 340 U.S. 1 (1950).

Seaboard's petition (pp. 15-19) reveals the absence of any federal question as well. What Seaboard seeks from this Court is a ruling that the Florida Supreme Court erred when it denied Seaboard's assertion that the decision below *conflicted* with the Florida Supreme Court's

decision in *Fowler v. Chillingworth*, 94 Fla. 1, 113 So. 667 (1927).[5] Again, in footnote 7 (petition pp. 18-19) Seaboard asserts a *factual finding* of the Florida courts is erroneous—a purely "state law" matter.

C. *Florida does not violate the "equal protection of the law clause" in its application of the forum non conveniens doctrine.*

The two bases for the *possibility* that a state's venue policy may involve a federal question, said Justice Frankfurter, would be (a) if a state (mistakenly) felt it was bound by federal law and could not formulate its own policy for the application of the doctrine, or (b) if a state discriminated as between its citizens and those of other states. (*Missouri v. Mayfield*, 340 U.S. at pp. 3-4). Neither predicate is found in Florida:

(A) The Florida courts have applied the doctrine of forum non conveniens as a matter of state policy—and not under a (mistaken) view that federal law precludes state determination. Southern Rwy. Co. v. Bowling

[5] *In Fowler v. Chillingworth*, plaintiff filed a mortgage foreclosure proceeding against a corporation chartered in Florida. However, the resident agent and all the corporate officers had moved from Florida and the Sheriff issued a non-executed return. The *sole* question before the Florida Supreme Court was whether or not proper service could be obtained upon a Florida corporation when there were no officers available for service of process. The court, in the context of the facts before it, merely stated that a corporation is always a resident of the state where it is chartered so that service can be made without the presence of corporate officers. It was not necessary for the court to mention, under those circumstances, that even though a corporation may be a "resident" of the state where it is chartered, it can be (and in 1975 usually is) a "resident" of other states for particular purposes, *i.e.*, venue, taxation, service of process, jurisdiction, etc.

129 So.2d 433 (Fla.App. 1961); Southern Rwy. Co. v. McCubbins 196 So.2d 512 (Fla.App.1967); Adams v. S.C.L. 224 So.2d 797 (Fla.App.1969).

(B) The Florida policy is a non-discriminatory one, applying equally to all, and requires as a *sine qua non* that both parties be "non-residents" before the doctrine can be invoked.

E.g., Adams v. S.C.L., supra; Hagen v. Viney 124 Fla 747, 169 So. 391 (1936).

Seaboard asserts denial of equal protection by Florida in two fashions:

1. The Florida courts' factual determination that Seaboard's operations in Florida are of such magnitude as to justify a finding that its principal place of business is in Florida; and

2. The Florida policy precluding the application of the doctrine of forum non conveniens to litigation involving residents of Florida.

Both assertions fail.

1. *Residency: Facts Established*

As Seaboard acknowledges, the issue as to its "resident" status was settled in *Adams v. S.C.L.*, 224 So.2d 797 (Fla.App.1969). Thereafter, the matter was repeatedly presented to the Florida appellate courts which, in turn,

repeatedly found Seaboard to be a "resident" for purposes of the doctrine of forum non conveniens. *Shaw v. S.C.L.*, 229 So.2d 275 (Fla.App.1970) *cert. den.*, 237 So. 2d 540 (Fla.1970); *S.C.L. v. Ford & Britt*, 238 So.2d 473 (Fla.App.1970); and *S.C.L. v. West*, 242 So.2d 156 (Fla. App.1971), *cert. den.*, 246 So.2d 112 (Fla.1971). As Seaboard likewise acknowledges, as a result of the fact that it had been factually adjudicated to maintain its principal place of business in Florida by the above decisions, its instant effort was dismissed upon respondent's motion, grounded upon the frivolous nature of Seaboard's position on this well adjudicated factual matter.

2. *Residency: A Valid Criterion*

Seaboard's complaint that the situs of its principal place of business should not control such factual finding is quickly demolished by reference to 28 U.S.C., §1332 (c). Congress there recognized that the location of a corporation's principal place of business shall control the determination as to whether such corporation may have access to the federal courts. Surely, Florida may utilize the same criterion.

Were Seaboard — like Southern Railway — factually found to have its principal place of business in Virginia, then Seaboard—like Southern—could get relief in appropriate circumstances. See *Southern Rwy. Co. v. McCubbins*, 196 So.2d 512 (Fla.App.1967), Seaboard, like every other Florida resident, however, is logically and non-discriminatorily called upon to respond to the courts in its "home" state. This precisely meets the test of *Missouri v. Mayfield*, supra:

> "Residents" and "non-residents" may be treated differently under the Constitution, so long as a state does not favor its own citizens. See 340 U.S. pg. 4.

The Florida courts are directly in line with the established precedent of this Court. Seaboard is treated by the courts of Florida "in the same manner as if it were a citizen of Florida." *Adams v. S.C.L.*, 224 So.2d 797, 802 (Fla.App. 1969).

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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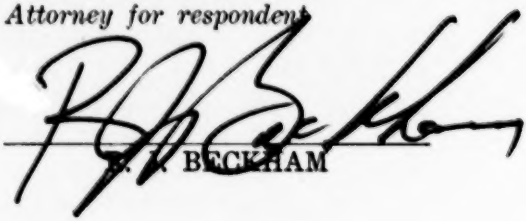
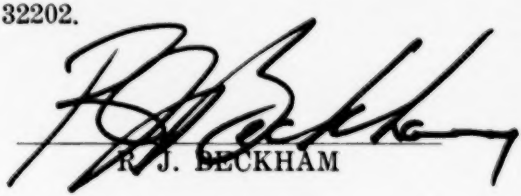


R. J. BECKHAM

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing Response to Petition for Writ of Certiorari to the District Court of Appeal, First District, State of Florida, was mailed this 8 day of October, 1975, to George D. Gabel, Jr., Wahl and Gabel, 405 Florida Title Building, Jacksonville, Florida 32202.



R. J. BECKHAM